

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RONALD KNUTSON, No. C 09-2402 CW (PR)

Plaintiff,

v.

FRANCISCO JACQUEZ, Warden, et al.,

Defendants.

RONALD KNUTSON, No. C 09-2793 CW (PR)

Plaintiff,

v.

THE COUNTY OF SANTA CLARA,

Defendant.

ORDER CONSOLIDATING ACTIONS,
DISMISSING AMENDED COMPLAINT IN
CASE NO. 09-2402 CW (PR) WITH
LEAVE TO AMEND, AND ADDRESSING
PLAINTIFF'S PENDING MOTIONS

Plaintiff Ronald Knutson, a state prisoner currently incarcerated at Pelican Bay State Prison (PBSP), has filed the two pro se civil rights actions pursuant to 42 U.S.C. § 1983.

On May 29, 2009, Plaintiff filed his first civil rights action, Knutson v. Jacquez, et al., No. C 09-2402 CW (PR). In that action, Plaintiff has filed numerous motions, including a "Request to Amend Civil Rights Complaint" (docket no. 12); an "Emergency Request to Stay Related Cases" (docket no. 13); a "Request for Continuance" (docket no. 16); and a "Motion for Preliminary Injunction" (docket no. 17). He has also filed an "Amended Complaint" (docket no. 15). He has also filed another document entitled, "First Amended Complaint" (docket no. 18), which seems to

1 include additional claims; therefore, it is construed as a
2 supplemental complaint. He has been granted leave to proceed in
3 forma pauperis (IFP) in Case No. C 09-2402 CW (PR).

4 On June 24, 2009, Plaintiff filed his second civil rights
5 action, Knutson v. The County of State Clara, No. C 09-2793 CW
6 (PR), in which he refers to his first action.

7 In his motion entitled, "Emergency Request to Stay Related
8 Cases," Plaintiff requests the "consolidation of matters in United
9 State District Court for the Northern District of California. Case
10 No. C 09-2793. Where the pleadings involve multiple plaintiffs and
11 numerous causes of actions against multiple defendants." (Pl.'s
12 "Emergency Request to Stay Related Cases" at 3.) Therefore, the
13 Court will construe this motion as a motion to consolidate the two
14 pending actions.

15 In the interests of justice, Plaintiff's request to
16 consolidate these actions is GRANTED. The Clerk of the Court shall
17 CONSOLIDATE these cases into the lower case number, Case No. C 09-
18 2402 CW (PR).

19 Plaintiff's "Request to Amend Civil Rights Complaint" (docket
20 no. 12) in Case No. C 09-2402 CW (PR) is also GRANTED. The Court
21 notes that the defendants in this action have not been served at
22 this time. Plaintiff may as a matter of course amend his complaint
23 because a responsive pleading has not yet been served. See Fed. R.
24 Civ. P. 15(a). Accordingly, Plaintiff's Amended Complaint (docket
25 no. 15) and Supplemental Complaint (docket no. 18) filed in Case
26 No. C 09-2402 CW (PR) shall together be considered as the operative
27 complaint in this action. Case No. C 09-2793 CW (PR) shall be
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1 administratively closed. The Court now conducts an initial
2 screening of the amended complaint pursuant to 28 U.S.C.
3 § 1915A(a).

4 STANDARD OF REVIEW

5 A federal court must conduct a preliminary screening in any
6 case in which a prisoner seeks redress from a governmental entity
7 or officer or employee of a governmental entity. See 28 U.S.C.
8 § 1915A(a). In its review, the court must identify cognizable
9 claims and dismiss any claims that are frivolous, malicious, fail
10 to state a claim upon which relief may be granted or seek monetary
11 relief from a defendant who is immune from such relief. See id.
12 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
13 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
14 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a
15 plaintiff must allege two essential elements: (1) that a right
16 secured by the Constitution or laws of the United States was
17 violated, and (2) that the alleged violation was committed by a
18 person acting under the color of state law. See West v. Atkins,
19 487 U.S. 42, 48 (1988).

20 DISCUSSION

21 A threshold question which must be answered before Plaintiff
22 can proceed with his action is whether he has exhausted available
23 administrative remedies with respect to his claims.
24

25 The Prison Litigation Reform Act of 1995 (PLRA) amended 42
26 U.S.C. § 1997e to provide that "[n]o action shall be brought with
27 respect to prison conditions under [42 U.S.C. § 1983], or any other
28 Federal law, by a prisoner confined in any jail, prison, or other

1 correctional facility until such administrative remedies as are
2 available are exhausted." 42 U.S.C. § 1997e(a). Although once
3 within the discretion of the district court, exhaustion in prisoner
4 cases covered by § 1997e(a) is now mandatory. Porter v. Nussle,
5 534 U.S. 516, 524 (2002). All available remedies must now be
6 exhausted; those remedies "need not meet federal standards, nor
7 must they be 'plain, speedy, and effective.'" Id. (citation
8 omitted). Even when the prisoner seeks relief not available in
9 grievance proceedings, notably money damages, exhaustion is a
10 prerequisite to suit. Id.; Booth v. Churner, 532 U.S. 731, 741
11 (2001). Similarly, exhaustion is a prerequisite to all prisoner
12 suits about prison life, whether they involve general circumstances
13 or particular episodes, and whether they allege excessive force or
14 some other wrong. Porter, 534 U.S. at 532. PLRA's exhaustion
15 requirement requires "proper exhaustion" of available
16 administrative remedies. Woodford v. Ngo, 548 U.S. 81, 94 (2006).

17 The State of California provides its prisoners the right to
18 appeal administratively "any departmental decision, action,
19 condition or policy perceived by those individuals as adversely
20 affecting their welfare." Cal. Code Regs. tit. 15, § 3084.1(a).
21 It also provides them the right to file appeals alleging misconduct
22 by correctional officers and officials. Id. § 3084.1(e). In order
23 to exhaust available administrative remedies within this system, a
24 prisoner must proceed through several levels of appeal:
25 (1) informal resolution; (2) formal written appeal on a CDC 602
26 inmate appeal form; (3) second level appeal to the institution head
27 or designee; and (4) third level appeal to the Director of the
28 California Department of Corrections and Rehabilitation. Barry v.

1 Ratelle, 985 F. Supp. 1235, 1237 (S.D. Cal. 1997) (citing Cal. Code
2 Regs. tit. 15, § 3084.5). A final decision from the Director's
3 level of review satisfies the exhaustion requirement under
4 § 1997e(a). Id. at 1237-38.

5 Non-exhaustion under § 1997e(a) is an affirmative defense
6 which should be brought by defendants in an unenumerated motion to
7 dismiss under Federal Rule of Civil Procedure 12(b). Wyatt v.
8 Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). However, a complaint
9 may be dismissed by the court for failure to exhaust if a prisoner
10 "conce[des] to nonexhaustion" and "no exception to exhaustion
11 applies." Id. at 1120. Here, Plaintiff conceded that he had not
12 exhausted his administrative remedies at the time he filed his
13 original complaint in Case No. C 09-2402 CW (PR). Plaintiff has
14 since filed an amended complaint in that case. In Plaintiff's
15 "Request for Continuance," in which most of his arguments are
16 incomprehensible, he states that after he filed his amended
17 complaint, "an inmate appeal was delivered to the Appeals
18 Coordinator at Pelican Bay State Prison seeking recovery of
19 personal property. This request seeks a continuance pending the
20 exhaustion of remedies." (Pl.'s Request for Continuance at 3.)

21 An action must be dismissed unless the prisoner exhausted his
22 available administrative remedies before he filed suit, even if the
23 prisoner fully exhausts while the suit is pending. McKinney v.
24 Carey, 311 F.3d 1198, 1199 (9th Cir. 2002); see Vaden v.
25 Summerhill, 449 F.3d 1047, 1051 (9th Cir. 2006) (where
26 administrative remedies are not exhausted before the prisoner sends
27 his complaint to the court it will be dismissed even if exhaustion
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1 is completed by the time the complaint is actually filed). Because
2 Plaintiff concedes that he has not exhausted some of his claims,
3 the amended complaint should be dismissed without prejudice to
4 refiling his exhausted claims in a new action. See McKinney, 311
5 F.3d at 1199-1201. However, as mentioned below, the Court is
6 unable to ascertain what claims he seeks to bring in federal court;
7 therefore, the Court cannot determine which of his claims are
8 unexhausted. Accordingly, the Court DENIES his "Request for
9 Continuance" (docket no. 16) without prejudice to refiling it after
10 he has amended his complaint, as directed below.

11 Most of Plaintiff's filings are handwritten and difficult to
12 decipher. Although Plaintiff used the Court's civil rights
13 complaint forms when he filed his original complaints, he included
14 numbered paragraphs containing claims that cover a variety of
15 topics.

16 His Amended Complaint, which is handwritten, has not been
17 submitted on the Court's civil rights complaint form. It is also
18 incomprehensible. For example, he refers to the same Santa County
19 Superior Court case in the original complaints in both his civil
20 rights actions, stating: "At initial arraignment proceeding in
21 Santa County Superior Court, Case No. CC446310, a spontaneous
22 statement was made with respect to the separation of powers and
23 apparently directed towards the recent decision [by] President
24 George Bush to suspend the writ" (Am. Compl. at 5.) This
25 is an example of the incomprehensible claims that Plaintiff
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1 includes in his Amended Complaint.¹ He also maintains that his
2 detention "from 1992 through present day violates Plaintiff's
3 rights under the Eighth Amendment" (Id. at 6.) However,
4 Plaintiff does not support his claim with facts relating to the
5 alleged Eighth Amendment violation.

6 In his Supplemental Complaint, Plaintiff used the Court's
7 civil rights complaint form; however, he has attached five
8 handwritten pages with numbered paragraphs containing additional
9 claims that are also incomprehensible. For example, he states:
10 "Plaintiff, Ronald Knutson, an individual alleges disparate impact
11 and unlawful employment practices on the part of the United
12 States." (Supp. Compl. at 3b.) Plaintiff also claims that he has
13 a pending action in the United States District Court for the
14 Eastern District of California.² (Id. at 2a.) However, that civil
15 rights action was dismissed on February 20, 2009 because he failed
16 to file a timely second amended complaint. See Knutson v. Lucky
17 Store Inc., et al., No. S-07-0981 LKK EFB P (E.D. Cal. Feb. 20,
18 2009). Similar to the present Amended Complaint, Plaintiff's
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20 ¹ Plaintiff also has a pending habeas corpus action, Knutson v.
21 Jacquez, No. C 08-05694 CW (PR), containing a similar incomprehensible
22 claim relating to his action in state court. Under the section
23 labeled, "Grounds for Relief," Plaintiff states that he "alleges
24 progressive developments with access to the courts and actual injury
25 associated with more than 'nominal value' allow for claim of actual
26 innocence in Santa Clara Superior Court, Case No. CC446310." (Pet.
in Case No. C 08-05694 CW (PR) at 8c-8d.) In an Order dated September
27 30, 2009 in his habeas action, the Court dismissed with leave to amend
his Third Amended Petition order to give him the opportunity to file
a simple, concise and direct petition which states clearly and
succinctly each claim he seeks to bring in federal court and explains
how each claim was exhausted in the state courts. (Sept. 30, 2009
Order in Case No. C 08-05694 CW (PR) at 3.)

28 ² In his "Emergency Request to Stay Related Cases," Plaintiff
also refers to his Eastern District case. (Pl.'s "Emergency Request
to Stay Related Cases" at 1.)

1 original handwritten complaint in that Eastern District case was
2 dismissed with leave to amend because it was "illegible," and his
3 amended complaint was also dismissed because it "was mostly
4 illegible and did not comply with the pleading requirements of Rule
5 8 of the Federal Rules of Civil Procedure." (Feb. 20, 2009 Order
6 in Case No. S-07-0981 LKK EFB P at 1.)

7 It is impossible to ascertain from Plaintiff's numerous
8 filings -- in both Case Nos. 09-2402 CW (PR) and 09-2793 CW (PR) --
9 what claims he seeks to bring in federal court, much less how he
10 exhausted his administrative remedies as to those claims. His
11 numerous motions and other filings also confuse matters further by
12 raising new arguments and claims.

13 "The Federal Rules require that averments 'be simple, concise,
14 and direct.'" McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir.
15 1996). Prolix, confusing complaints such as the ones Plaintiff has
16 filed in his two civil rights actions impose unfair burdens on
17 litigants and the court and fail to perform the essential functions
18 of a complaint. Cf. id. at 1179-80. Accordingly, Plaintiff's
19 Amended Complaint is DISMISSED with leave to amend in order to give
20 Plaintiff the opportunity to file a simple, concise and direct
21 complaint which states clearly and succinctly each claim he seeks
22 to bring in federal court and explains how he has exhausted his
23 administrative remedies as to each claim.

24 Also before the Court is Plaintiff's "Motion for Preliminary
25 Injunction." Again, Plaintiff's arguments are incomprehensible.
26 The Court DENIES his motion without prejudice to refiling it after
27 he has amended his complaint.
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CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Plaintiff's "Emergency Request to Stay Related Cases," which has been construed as a request to consolidate his two civil rights actions (docket no. 13 in Case No. C 09-2402 CW (PR)) is GRANTED. The Clerk of the Court shall CONSOLIDATE these cases into the lower case number, Case No. C 09-2402 CW (PR).

2. The Clerk shall administratively close Case No. C 09-2793 CW (PR). Plaintiff's application for leave to proceed IFP in C 09-2793 CW (PR) is terminated as moot because no filing fee is due as this action was opened in error.

3. Plaintiff's "Request to Amend Civil Rights Complaint" (docket no. 12 in Case No. C 09-2402 CW (PR)) is GRANTED. Plaintiff's "Amended Complaint" (docket no. 15) has already been filed. The Court construes his "First Amended Complaint" (docket no. 18) as his supplemental complaint; therefore, the Clerk is directed to rename it as his "Supplemental Complaint" and to mark it as filed on October 26, 2009, the date it was received by the Court.

4. Plaintiff's Amended Complaint in Case No. C 09-2402 CW (PR) is DISMISSED with leave to amend. The amended pleading must be on the Court's civil right complaint form and must include the caption and civil case number used in this Order -- No. C 09-2402 CW (PR) -- and the words SECOND AMENDED COMPLAINT on the first page. Failure to file a proper second amended complaint within thirty (30) days of this Order will result in the dismissal of this action.

1 5. Plaintiff's "Request for Continuance" (docket no. 16) and
2 his "Motion for Preliminary Injunction" (docket no. 17) are DENIED
3 without prejudice to refiling them, more clearly written, after he
4 has amended his complaint.

5 6. This Order terminates Docket nos. 12, 13, 16 and 17 in
6 Case No. C 09-2402 CW (PR).

7 IT IS SO ORDERED.

8
9 Dated: 11/19/09



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RONALD KNUTSON,

Case Number: CV09-02402 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

THE WARDEN et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 19, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Ronald Knutson C-04763
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95531

Dated: November 19, 2009

Richard W. Wieking, Clerk

By: Sheilah Cahill, Deputy Clerk